

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ROBERT FELDMAN,

Plaintiff,

-against-

MALBA GARDENS OWNERS CORP., and
DIRECT MANAGEMENT CORP., and JAKE
DEMOSTHENOUS, individually,

Defendants.
-----X

Docket No.: 1:18-cv-05095
(ILG) (RER)

DEFENDANT
MALBA GARDENS' ANSWER

Defendant MALBA GARDENS OWNERS CORP. by its attorneys, Wilson, Elser, Moskowitz, Edelman & Dicker LLP, hereby answers the Complaint filed by plaintiff Robert Feldman upon information and belief as follows:

AS TO "NATURE OF CASE"

1. With respect to the allegations contained in paragraph "1" of the Complaint that set forth conclusions of law or consist of Plaintiff's characterization of the Complaint, no response is required. Otherwise, Malba Gardens denies each allegation contained therein, specifically denies that it violated any federal or state law or engaged in wrongful conduct, and respectfully refers all questions of law to the Court and all questions of fact to the trier of fact.

2. Malba Gardens denies the allegations contained in paragraph "2" of the Complaint, except admits that Plaintiff was employed by Malba Gardens from in or about November 2013 until in or about September 2017 and respectfully refers all questions of law to the Court and all questions of fact to the trier of fact.

3. Malba Gardens denies the allegations contained in paragraph "3" of the Complaint and specifically denies that it violated any federal or state law or engaged in wrongful

conduct, and respectfully refers all questions of law to the Court and all questions of fact to the trier of fact.

4. Malba Gardens denies the allegations contained in paragraph “4” of the Complaint, specifically denies that it violated any federal or state law or engaged in wrongful conduct, and respectfully refers all questions of law to the Court and all questions of fact to the trier of fact.

5. Malba Gardens denies the allegations contained in paragraph “5” of the Complaint as pled and respectfully refers all questions of law to the Court and all questions of fact to the trier of fact

AS TO “JURISDICTION AND VENUE”

6. With respect to the allegations contained in paragraph “6” of the Complaint that set forth conclusions of law, no response is required. Otherwise, Malba Gardens confirms that Plaintiff purports to invoke the jurisdiction of this Court and respectfully refers all questions of law to the Court and all questions of fact to the trier of fact.

7. With respect to the allegations contained in paragraph “7” of the Complaint that set forth conclusions of law, no response is required. Otherwise, Malba Gardens confirms that Plaintiff has elected to venue this action as set forth therein and respectfully refers all questions of law to the Court and all questions of fact to the trier of fact.

AS TO “PARTIES”

8. Malba Gardens denies the allegations contained in paragraph “8” of the Complaint and respectfully refers all questions of law to the Court and all questions of fact to the trier of fact.

9. Malba Gardens denies the allegations contained in paragraph “9” of the

Complaint and respectfully refers all questions of law to the Court and all questions of fact to the trier of fact.

10. Malba Gardens denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “10” of the Complaint and respectfully refers all questions of law to the Court and all questions of fact to the trier of fact.

11. Malba Gardens denies the allegations contained in paragraph “11” of the Complaint, except admits that, upon information and belief, that during the relevant statutory period, Jake Demosthenous was Direct Management Corp.’s President and respectfully refers all questions of law to the Court and all questions of fact to the trier of fact.

12. Malba Gardens denies the allegations contained in paragraph “12” of the Complaint and respectfully refers all questions of law to the Court and all questions of fact to the trier of fact.

AS TO “BACKGROUND FACTS”

13. Malba Gardens denies the allegations contained in paragraph “13” of the Complaint and respectfully refers all questions of law to the Court and all questions of fact to the trier of fact.

14. Malba Gardens denies the allegations contained in paragraph “14” of the Complaint, except admits that it hired Plaintiff in 2013 to work as its part-time live-in superintendent and respectfully refers all questions of law to the Court and all questions of fact to the trier of fact.

15. Malba Gardens denies the allegations contained in paragraph “15” of the Complaint, except admits that it employed Plaintiff from in or about November of 2013 until September of 2017 as its part-time live-in superintendent and respectfully refers all questions of

law to the Court and all questions of fact to the trier of fact.

16. Malba Gardens denies the allegations contained in paragraph “16” of the Complaint and respectfully refers all questions of law to the Court and all questions of fact to the trier of fact.

17. Malba Gardens denies the allegations contained in paragraph “17” of the Complaint, except admits that Plaintiff resided in an apartment that it provided to him at no cost as part of Plaintiff’s compensation as Malba Gardens’ live-in superintendent and respectfully refers all questions of law to the Court and all questions of fact to the trier of fact.

18. Malba Gardens denies the allegations contained in paragraph “18” of the Complaint and respectfully refers all questions of law to the Court and all questions of fact to the trier of fact.

19. Malba Gardens denies the allegations contained in paragraph “19” of the Complaint as pled, except admits that Plaintiff performed the tasks typically performed by residential building superintendents on behalf of Malba Gardens and respectfully refers all questions of law to the Court and all questions of fact to the trier of fact.

20. Malba Gardens denies the allegations contained in paragraph “20” of the Complaint and respectfully refers all questions of law to the Court and all questions of fact to the trier of fact.

21. Malba Gardens denies the allegations contained in paragraph “21” of the Complaint and respectfully refers all questions of law to the Court and all questions of fact to the trier of fact.

22. Malba Gardens denies the allegations contained in paragraph “22” of the Complaint and respectfully refers all questions of law to the Court and all questions of fact to the

trier of fact.

23. Malba Gardens denies the allegations contained in paragraph “23” of the Complaint and respectfully refers all questions of law to the Court and all questions of fact to the trier of fact.

24. Malba Gardens denies the allegations contained in paragraph “24” of the Complaint, specifically avers that it did not violate any federal, state, or city law, and respectfully refers all questions of law to the Court and all questions of fact to the trier of fact.

25. Malba Gardens denies the allegations contained in paragraph “25” of the Complaint and respectfully refers all questions of law to the Court and all questions of fact to the trier of fact.

26. Malba Gardens denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “26” of the Complaint and respectfully refers all questions of law to the Court and all questions of fact to the trier of fact.

27. Malba Gardens denies the allegations contained in paragraph “27” of the Complaint and respectfully refers all questions of law to the Court and all questions of fact to the trier of fact.

28. Malba Gardens denies the allegations contained in paragraph “28” of the Complaint and respectfully refers all questions of law to the Court and all questions of fact to the trier of fact.

RESPONSE TO THE FIRST CLAIM FOR RELIEF AGAINST DEFENDANTS
Unpaid Minimum Wages Under the FLSA

29. Malba Gardens repeats and reiterates each and every response to paragraphs “1” through “28” as if fully set forth at length herein as Malba Gardens’ response to paragraph “29” of the Complaint.

30. With respect to the allegations contained in paragraph “30” of the Complaint that set forth conclusions of law, no response is required. Otherwise, Malba Gardens denies each allegation contained therein as pled and respectfully refers all questions of law to the Court and all questions of fact to the trier of fact.

31. Malba Gardens denies With respect to the allegations contained in paragraph “31” of the Complaint and respectfully refers all questions of law to the Court and all questions of fact to the trier of fact.

32. Malba Gardens denies the allegations contained in paragraph “32” of the Complaint and respectfully refers all questions of law to the Court and all questions of fact to the trier of fact.

33. Malba Gardens denies the allegations contained in paragraph “33” of the Complaint and respectfully refers all questions of law to the Court and all questions of fact to the trier of fact.

34. Malba Gardens denies the allegations contained in paragraph “34” of the Complaint and respectfully refers all questions of law to the Court and all questions of fact to the trier of fact.

35. Malba Gardens denies the allegations contained in paragraph “35” of the Complaint and respectfully refers all questions of law to the Court and all questions of fact to the trier of fact

RESPONSE TO THE SECOND CLAIM FOR RELIEF AGAINST DEFENDANTS
Unpaid Minimum Wages Under the NYLL and the NYCRR

36. Malba Gardens repeats and reiterates each and every response to paragraphs “1” through “35” as if fully set forth at length herein as Malba Gardens’ response to paragraph “36” of the Complaint.

37. With respect to the allegations contained in paragraph “37” of the Complaint that set forth conclusions of law, no response is required. Otherwise, Malba Gardens denies each allegation contained therein as pled and respectfully refers all questions of law to the Court and all questions of fact to the trier of fact.

38. With respect to the allegations contained in paragraph “38” of the Complaint that set forth conclusions of law, no response is required. Otherwise, Malba Gardens denies each allegation contained therein as pled and respectfully refers all questions of law to the Court and all questions of fact to the trier of fact.

39. Malba Gardens denies the allegations contained in paragraph “39” of the Complaint and respectfully refers all questions of law to the Court and all questions of fact to the trier of fact.

40. Malba Gardens denies the allegations contained in paragraph “40” of the Complaint and respectfully refers all questions of law to the Court and all questions of fact to the trier of fact.

41. Malba Gardens denies the allegations contained in paragraph “41” of the Complaint and respectfully refers all questions of law to the Court and all questions of fact to the trier of fact.

42. Malba Gardens denies the allegations contained in paragraph “42” of the Complaint and respectfully refers all questions of law to the Court and all questions of fact to the trier of fact.

43. Malba Gardens denies the allegations contained in paragraph “43” of the Complaint and respectfully refers all questions of law to the Court and all questions of fact to the trier of fact.

RESPONSE TO THE THIRD CLAIM FOR RELIEF AGAINST DEFENDANTS
Unpaid Overtime Under the FLSA

44. Malba Gardens repeats and reiterates each and every response to paragraphs “1” through “43” as if fully set forth at length herein as Malba Gardens’ response to paragraph “44” of the Complaint.

45. With respect to the allegations contained in paragraph “45” of the Complaint that set forth conclusions of law, no response is required. Otherwise, Malba Gardens denies each allegation contained therein as pled and respectfully refers all questions of law to the Court and all questions of fact to the trier of fact.

46. Malba Gardens denies the allegations contained in paragraph “46” of the Complaint and respectfully refers all questions of law to the Court and all questions of fact to the trier of fact.

47. Malba Gardens denies the allegations contained in paragraph “47” of the Complaint and respectfully refers all questions of law to the Court and all questions of fact to the trier of fact.

48. Malba Gardens denies the allegations contained in paragraph “48” of the Complaint and respectfully refers all questions of law to the Court and all questions of fact to the trier of fact.

49. Malba Gardens denies the allegations contained in paragraph “49” of the Complaint and respectfully refers all questions of law to the Court and all questions of fact to the trier of fact.

50. Malba Gardens denies the allegations contained in paragraph “50” of the Complaint and respectfully refers all questions of law to the Court and all questions of fact to the trier of fact.

RESPONSE TO THE FOURTH CLAIM FOR RELIEF AGAINST DEFENDANTS
Failure to Pay Timely Wages in Violation of the NYLL

51. Malba Gardens repeats and reiterates each and every response to paragraphs “1” through “50” as if fully set forth at length herein as Malba Gardens’ response to paragraph “51” of the Complaint.

52. With respect to the allegations contained in paragraph “52” of the Complaint that set forth conclusions of law, no response is required. Otherwise, Malba Gardens denies each allegation contained therein as pled and respectfully refers all questions of law to the Court and all questions of fact to the trier of fact.

53. Malba Gardens denies the allegations contained in paragraph “53” of the Complaint and respectfully refers all questions of law to the Court and all questions of fact to the trier of fact.

54. Malba Gardens denies the allegations contained in paragraph “54” of the Complaint and respectfully refers all questions of law to the Court and all questions of fact to the trier of fact.

55. Malba Gardens denies the allegations contained in paragraph “55” of the Complaint and respectfully refers all questions of law to the Court and all questions of fact to the trier of fact.

RESPONSE TO THE FIFTH CLAIM FOR RELIEF
Failure to Furnish Proper Wage Notice in Violation of the NYLL

56. Malba Gardens repeats and reiterates each and every response to paragraphs “1” through “55” as if fully set forth at length herein as Malba Gardens’ response to paragraph “56” of the Complaint.

57. With respect to the allegations contained in paragraph “57” of the Complaint that set forth conclusions of law, no response is required. Otherwise, Malba Gardens denies each

allegation contained therein as pled and respectfully refers all questions of law to the Court and all questions of fact to the trier of fact.

58. Malba Gardens denies the allegations contained in paragraph “58” of the Complaint and respectfully refers all questions of law to the Court and all questions of fact to the trier of fact.

59. Malba Gardens denies the allegations contained in paragraph “59” of the Complaint and respectfully refers all questions of law to the Court and all questions of fact to the trier of fact.

60. Malba Gardens denies the allegations contained in paragraph “60” of the Complaint and respectfully refers all questions of law to the Court and all questions of fact to the trier of fact.

AS TO “DEMAND FOR A JURY TRIAL”

61. With respect to the allegations contained in paragraph “61” of the Complaint, no response by Malba Gardens is required.

AS TO PLAINTIFF’S “PRAYER FOR RELIEF”

62. Malba Gardens repeats and reiterates each and every response as previously set forth herein in response to the allegations incorporated in the preceding paragraphs. Malba Gardens further denies that any relief is warranted in response to Plaintiff’s request for assorted damages, costs, fees and other relief, specifically denies that any legally cognizable causes of action exists pursuant to any federal, state, or city statutes or laws, and respectfully refers all questions of law to the Court and all questions of fact to the trier of fact.

AFFIRMATIVE DEFENSES

63. Malba Gardens sets forth the following affirmative defenses to the claims made in the Complaint. In doing so, Malba Gardens does not assume the burden of proof with respect to

any of the affirmative defenses where the substantive law provides otherwise.

FIRST AFFIRMATIVE DEFENSE

64. The Complaint fails to state a cause of action upon which relief may be granted and specifically fails to state any legally cognizable wage and hour claim against Malba Gardens.

SECOND AFFIRMATIVE DEFENSE

65. Malba Gardens provided an apartment in the Building to Plaintiff for his primary benefit and at no cost to him, which cost constitutes a permissible lodging credit pursuant to the Fair Labor Standards Act's Section 3(m).

THIRD AFFIRMATIVE DEFENSE

66. Malba Gardens provided an apartment in the Building to Plaintiff for his primary benefit and at no cost to him, which cost constitutes a permissible credit pursuant to 12 NYCRR § 141, *et seq.*

FOURTH AFFIRMATIVE DEFENSE

67. There is no private right of action to assert a claim against Malba Gardens under New York Labor Law § 191(1)(a) relating to the frequency of Plaintiff's pay.

FIFTH AFFIRMATIVE DEFENSE

68. Subject to proof through discovery, Plaintiff has failed in whole or in part, to mitigate his purported damages.

SIXTH AFFIRMATIVE DEFENSE

69. Any damages awarded to Plaintiff would result in unjust enrichment.

SEVENTH AFFIRMATIVE DEFENSE

70. Plaintiff's conduct was the sole cause of damages alleged in the Complaint, and as such, is a bar to this action.

EIGHTH AFFIRMATIVE DEFENSE

71. At all relevant times, Malba Gardens acted in good faith and has not violated any rights that may be secured to Plaintiff under any federal, state, or city statute or law.

NINTH AFFIRMATIVE DEFENSE

72. The Complaint fails to state a claim against Malba Gardens upon which liquidated damages can be awarded.

TENTH AFFIRMATIVE DEFENSE

73. The Complaint fails to state a claim against Malba Gardens upon which punitive damages can be awarded.

ELEVENTH AFFIRMATIVE DEFENSE

74. The Complaint fails to state a claim against Malba Gardens upon which attorneys' fees or costs can be awarded.

TWELFTH AFFIRMATIVE DEFENSE

75. Plaintiff's Complaint or some parts thereof may be barred by the applicable statute of limitations.

THIRTEENTH AFFIRMATIVE DEFENSE

76. Malba Gardens is not an employer subject to the Fair Labor Standards Act.

FOURTEENTH AFFIRMATIVE DEFENSE

77. Malba Gardens provided a Plaintiff with monies for the utilities associated with the apartment he was provided in the Building, which constitutes a permissible credit pursuant to 12 NYCRR § 141, *et seq.*

FIFTEENTH AFFIRMATIVE DEFENSE

78. Malba Gardens was exempt from providing Plaintiff with overtime pursuant to 12 NYCRR § 141, *et seq.*

SIXTEENTH AFFIRMATIVE DEFENSE

79. Malba Gardens is not engaged in interstate commerce.

SEVENTEENTH AFFIRMATIVE DEFENSE

80. Malba Gardens is not a joint enterprise, single integrated employer, or any other such joint venture, with any entity.

RESERVATION TO AMEND

81. Malba Gardens specifically reserves its right to amend and plead any and all Affirmative Defenses that may become known to it during the course of discovery.

MALBA GARDENS' PRAYER FOR RELIEF

WHEREFORE, Malba Gardens respectfully prays that the Court enter judgment as follows:

1. Dismissing Plaintiff's Complaint in its entirety;
2. Granting Malba Gardens costs and disbursements of defending this action; and
3. Granting any further or different relief that this Court deems just and equitable.

Dated: New York, New York
November 21, 2018

**WILSON, ELSER, MOSKOWITZ,
EDELMAN & DICKER LLP**

By: /s/ Celena R. Mayo

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